

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
: Docket #20cv8924  
IN RE NEW YORK CITY POLICING :  
DURING SUMMER 2020 DEMONSTRATIONS :  
: New York, New York  
: July 11, 2022  
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE GABRIEL W. GORENSTEIN,  
UNITED STATES MAGISTRATE JUDGE

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None

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<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: We're here in In Re: New York City Policing During Summer 2020 Demonstrations, case number 20cv8924.

Will counsel, please state their appearances for the record, starting with plaintiffs.

MS. LILLIAN MARQUEZ: Good afternoon, Your Honor, this is Lillian Marquez of the office of the New York State Attorney General on behalf of plaintiffs and the People.

MR. WYLIE STECKLOW: Good afternoon, Your Honor, Wylie Stecklow on behalf of the plaintiffs in the Gray litigation.

MR. ROBERT HODGSON: Good afternoon, Your Honor, this is Robert Hodgson from the New York Civil Liberties Union on behalf of the Payne plaintiffs.

MR. ROBERT RICKNER: Good afternoon, Your Honor, this is Rob Rickner on behalf of the Sierra plaintiffs.

MX. REMY GREEN: This is Remy Green on behalf of the Sow and Hernandez plaintiffs, and while I don't anticipate I'll be speaking today, if I speak I should appear in the transcript as Mx. Green spelled M-X-period rather than Mr. or Ms.

MS. ALISON FRICK: This is Alison Frick for

1 the Wood case.

2 MS. TAHANIE ABOUSHI: Good afternoon, Your  
3 Honor, this is Tahanie Aboushi for the Roland  
4 plaintiffs.  
5

6 MS. AMY ROBINSON: Good afternoon, Your Honor,  
7 this is Amy Robinson for defendants.

8 MS. GENEVIEVE NELSON: This is Genevieve  
9 Nelson for defendants, good afternoon, Your Honor.

10 MS. JENNY WENG: This is Jenny Weng for  
11 defendants, good afternoon, Your Honor.

12 MS. BRIDGET HAMILL: Good afternoon, Your  
13 Honor, this is Bridget Hamill for the defendants.

14 HONORABLE GABRIEL W. GORENSTEIN (THE COURT):  
15 Okay, I assume that's everyone. We are here based on a  
16 letter of June 28<sup>th</sup> filed twice at dockets 625 and 627,  
17 and the response at docket 639. I think we'll start  
18 with what the defendants are going to supply plaintiffs  
19 and then we'll get to what the plaintiffs are going to  
20 supply defendants. But Ms. Frick, you're speaking for  
21 the plaintiffs?

22 MS. FRICK: yes, Your Honor, thanks very much.  
23 So --

24 THE COURT: Hold on, hold on, I just wanted to  
25 know who it was.

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MS. FRICK: Yes, it's me.

THE COURT: And what I was going to say was you obviously didn't have the benefit of seeing the letter though I know you talked to them. Maybe what we can do is work off what their proposal is with respect to that, it may be in their letter or if you need to confirm what it is we can do that. Maybe you're fine with it, maybe you have problems, so why don't you let me know.

MS. FRICK: Sure. So I think that we're relatively close to agreement but I think we need the Court's assistance to get us over the finish line in terms of what we have requested from defendants. So we have asked for two things, information on the one hand, and crucial documents in kind of three categories on the other hand.

So with respect to information we're very close to an agreement. From the City's letter it appears that the City is agreeing to provide at a reasonable timeline information about the protest that a deponent was present at or involved in the planning. We ask only that that also be supplemented to identify protests that the deponent may have been involved in the response. So not just physically present or

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involved in the planning, but also in the response or, you know, the investigation afterwards, any aftermath with respect to that protest. And we just ask that that information be provided as early as practical so that we can coordinate our depositions.

So I do think that we're quite close to an agreement on that bucket of information. I can move on to the second category which is the documents that we have asked for and I'm going to --

THE COURT: I'm sorry, I'm sorry, I realized I was on mute, I apologize.

MS. FRICK: Oh, I'm sorry, Your Honor.

THE COURT: I, what I'd like to do is do them one piece at a time so we don't have to sort of go back over it.

MS. FRICK: Sure.

THE COURT: So let me turn to the City, it sounds like they're adding the response to what you put, any problem with that?

MS. ROBINSON: No, Your Honor, the only question that I have, I think we are in substantial agreement, the only question I have is what plaintiffs are referring to as the aftermath.

MS. FRICK: Well, Ms. Robinson, I think it

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depends a little bit about the information that you  
learned from --

THE COURT: Just as a matter of practicality,  
Ms. Frick, just address me, I don't want attorneys  
addressing each other.

MS. FRICK: Oh, sure, I apologize, Your Honor.  
I think that's a completely valid question and I think  
it will depend on the deponent. And so some of these  
deponents were involved more in kind of after action  
reviews or discussions about, I would imagine that some  
are more involved than others in discussions about, you  
know, what happened or lessons learned --

THE COURT: So you're talking about, so you  
mean by aftermath you mean after reviews of what  
happened?

MS. FRICK: I don't think we want to limit it  
to something as formal as that, but to the extent that  
there were meetings or discussions, say, at the  
precinct level or in at some other level about a given  
protest that had happened, we want to know if the  
deponent was involved in such discussions, even if that  
deponent had not, themselves, been present at the  
protest.

THE COURT: Okay, so you're talking about, we



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just need to put it in a term and, by the way, I want a written order after all this and hopefully my direction will be clear, if not you present me with competing orders, it sounds like what you're looking for is any involvement in a, sort of a self-evaluation of the police department conduct during the protests, is that what you're looking for?

MS. FRICK: I think it might be just more basic than that and it might be our fault for trying to provide examples, but what we want is to know which protests each deponent knows about. And that might be because they were there, but it might be because they had discussions with people who were there or, you know, there were involved in some way with supervising people who were there, or they met to plan the protest but didn't attend, or they had discussions in the precinct afterwards about lessons learned. So I am hesitant to cabin it to something as formal as, you know, some kind of after action review.

What we want to know are the protests that each individual deponent, you know, knows the most about and is there to talk about so that we can make sure that we question the deponent on those protests. So we provided an, what I would think of as a list of

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examples of, you know, whether they were involved in the planning, the execution or the aftermath. I understand that aftermath might be too vague of a term but this is what we're trying to get at.

THE COURT: It is too vague so I'm giving you your chance to give me something else, I'm not sure what, I'd like something, you know, in the form of a phrase rather than in the form of examples, if you can think of a phrase I'm willing to consider it, otherwise I'll try to come up with one, do you have anything?

MS. FRICK: Perhaps formal or informal reviews?

THE COURT: Of the police department's conduct at the protest?

MS. FRICK: Yes, after the fact review or evaluation.

THE COURT: Yes, I thought that's what I was kind of saying, evaluation of the police department's conduct at that protest.

MS. FRICK: Yes, I think maybe if we can say a formal or informal evaluation of the police department's conduct.

THE COURT: Well the way I put it, evaluation I think would include both but, okay. Ms. Robinson, any

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problem with that?

MS. ROBINSON: No problem with that, Your Honor.

THE COURT: Okay, I think evaluation of the police department's conduct of the protest is fine, I'm not specifying whether it's formal or informal, so I think it includes both.

Okay, next category.

MS. FRICK: So then we have documents that we're asking for and we start by noting, as we did in the letter, that these are documents that were all responsive to discovery requests served a year ago. So but, you know, given where we are now we are kind of willing to take what we can at this point so that we can actually move forward quickly with effective depositions.

So the first kind of category of things was all grouped together, we've asked for calendars and texts, text messages, and we've asked for those during a short eight week window when the bulk of protests occurred, May 25<sup>th</sup> to July 25<sup>th</sup>. And the defendants appear willing to provide calendars and texts to the extent that they exist but I believe I understood from their letter that they want to limit it to I guess

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2 documents just created on the dates of any protest  
3 identified in our first, you know, information sharing  
4 exercise. They also seem to want to limit gathering  
5 texts --

6 THE COURT: Hold on. Hold on one second, I  
7 want to read the part of the letter, I mean I'll give  
8 them a chance soon, but I just want to read the part of  
9 the letter that you are talking about that you think is  
10 limiting, can you just quote it for me?

11 MS. FRICK: Oh, sure, let me find it. Okay,  
12 calendars -- sorry, this is on page, the top of page 3,  
13 the first full paragraph.

14 THE COURT: All right.

15 MS. FRICK: "Defendants agree to provide  
16 relevant, responsive, non-privileged calendars and text  
17 messages but only should be required to supply any for  
18 plaintiffs' 83 Schedule A protest locations." So I took  
19 that to mean, I don't really know what that means with  
20 respect to texts and calendars, but I took that to mean  
21 texts and calendars that occurred on the date of those  
22 protests.

23 THE COURT: Well maybe it doesn't, I assumed  
24 it meant concerning those protests, Ms. Robinson?

25 MS. ROBINSON: What we were referring to would

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2 be, starting with calendars first, would be the  
3 calendars that are for the schedule, the 83 Schedule A  
4 dates list of protest locations that plaintiff  
5 provided. And even going back to the first, the first  
6 prong of this that we discussed earlier, also subject  
7 to relevancy and to privilege. And, yes, we are trying  
8 to limit it to the 83 Schedule A protest locations.

9 THE COURT: Okay, I'm a little confused. Hold  
10 on, let's just, let me try to imagine this. The, I'm  
11 not sure what a calendar is anymore in terms of what  
12 people actually maintain. Is there some department, you  
13 know, issued calendar or --

14 MS. ROBINSON: They use Outlook, Your Honor.

15 THE COURT: Okay, so they use Outlook, and, I  
16 see, so you want to supply their calendars for, let's  
17 say, the protest June 1<sup>st</sup>, you want to supply the  
18 calendar for June 1<sup>st</sup> but only insofar as it mentions  
19 protest things, is that it?

20 MS. ROBINSON: Well, yes, things that are  
21 relevant to protests, that things that are not  
22 privileged, things that are responsive, not --

23 THE COURT: Privilege don't worry about, you  
24 can withhold what's privileged as long as you did a  
25 log, or do a log, or we can talk about that. But what

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is it that you are imagining not giving? Is it, you know, they have a meeting with somebody, you know, that relates to, you know, X murder that occurred on and you don't want to give that up, is that it?

MS. ROBINSON: Correct, Your Honor, just anything that's not responsive, you know, that, I mean something that is department, that is department issue or something that, you know, a dentist appointment, things that, you know, things that pop up on calendars that, you know, are not responsive to the protests, themselves.

THE COURT: All right, so Ms. Frick?

MS. FRICK: Well, Your Honor, I think as we've seen already in this case, we've had some issues with determinations of what is, quote, relevant information, and that's why what we have asked for is a kind of, just an eight week period where everything that's not privileged be turned over. Because, to be honest, if they're spending lots of time not dealing with the protests that it helps, is also information that's relevant. It also might not be, for example, with Mott Haven there were, we believe, phone calls or meetings with non-police people that on their face might not be, might not appear to be related to any protest but, you

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know, we believe that there is a connection there to the, to how the response ended up going. And so it just seems to be inviting a lot of mischief to have parsing through each day for defendants to be determining what they think is relevant as opposed to providing calendars that should have been produced a year ago that have not been objected to, that aren't included in the chart of objections and we've now limited it to a very short window of time.

MS. ROBINSON: Okay, Your Honor, may I interject?

THE COURT: Yes.

MS. ROBINSON: What plaintiffs are asking for are not just the eight weeks, they're asking for the eight weeks plus any other protests that they were, that the deponent was present for. That goes outside of the Schedule A, and so, you know, we have --

THE COURT: Hold on, can you just stop for a second?

MS. ROBINSON: Yes.

THE COURT: Are you saying that there are protests that occurred that are not on Schedule A?

MS. ROBINSON: Yes.

THE COURT: That are at issue in this lawsuit?

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MS. ROBINSON: No.

THE COURT: I'm confused about what's going on.

MS. ROBINSON: There are, the only dates of issue in the lawsuit are the plaintiffs' provided Schedule A list of protest dates and locations.

THE COURT: Okay, and is that --

MX. GREEN: Your Honor, this is Remy, that's incorrect. The Schedule A is not the limitation, a limitation on what's at issue in the case.

THE COURT: Hold on, I'm enforcing my one attorney rule here, I can't, I can't have more than one attorney talking. So, look, the Schedule A, what is this eight week period, Ms. Frick?

MS. FRICK: So, Your Honor, we had asked for all of the calendars from the eight week period plus calendar entries --

THE COURT: What is the eight week period? Is the eight week period --

MS. FRICK: May --

THE COURT: Let me finish my sentence. Let me finish my sentence. Is the eight week period coterminous with whatever the dates are, the beginning and the end date on Schedule A, does that happen to be



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2 eight weeks or is that longer than eight weeks?

3 MS. FRICK: No, Your Honor, Schedule A is  
4 longer than eight weeks. This eight weeks is when the  
5 bulk of protests occurred, May 25<sup>th</sup> to July 25<sup>th</sup>, but  
6 then we've asked for plus calendar entries reflecting  
7 the involvement in protests outside of that time range  
8 which is more limited. And, Your Honor, just to be  
9 clear what Mx. Green was referring to is that Schedule  
10 A does not include every single protest at issue in  
11 this case, there are additional ones that have come to  
12 light during discovery and also it doesn't include the  
13 Roland, the Roland case protest. It was, Schedule A was  
14 meant to, you know, help the parties, not limit the  
15 parties.

16 THE COURT: Okay, I'm still trying to work  
17 through the calendar problem. So you are looking for  
18 the calendars of these individuals for the eight week  
19 period plus what, Ms. Frick?

20 MS. FRICK: Plus all calendar entries  
21 reflecting involvement in any protests outside of that  
22 time range which will be, by definition, more limited.

23 THE COURT: Okay, but only to the extent that  
24 there is a protest at issue. And how do they know  
25 they're at issue, they look at Schedule A and plus

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Roland plus what?

MS. FRICK: We have served an amended Schedule A that tried to provide all of the protests, defendants have objected to that. Again, it was meant to be of assistance so I don't completely understand defendants' objection, but we have a list.

THE COURT: Okay, so at least it's known what you're asking for.

MS. FRICK: Yes.

THE COURT: So, Ms. Robinson, try me again because I think I got thrown off by what was outside the eight week period.

MS. ROBINSON: Okay.

THE COURT: Tell me what it is they want that you don't want to do.

MS. ROBINSON: What they want is an eight week, a random eight week period, there has been no, you know, eight week period in the litigation so far. The deposition protocol that's in place right now for line officers is their attendance, their attendance or policing at the Schedule A list of protests. And so we believe that the protocol for the high ranking officers should be no different.

THE COURT: Well hold on, hold on --

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MS. ROBINSON: It should be the Schedule A --

THE COURT: Hold on. Hold on. Hold on. The low level people I didn't think had calendars, I thought I had you look through the memo book --

MS. ROBINSON: I'm sorry, no, you're absolutely right, I'm sorry, Your Honor, I misspoke. What was relevant at the line officer depositions was the Schedule A list of protests, so that's what we have been applying to the high ranking officers' protocol as well.

THE COURT: Okay, but we have a request of a different character, and I'm not even deciding yet what way it cuts, but now we're asking for peoples' calendars which was not going on with the low level police officers.

MS. ROBINSON: True, we were asking for their, they were essentially asking for their, whether they were present at any one of those 83 protest locations which is what I understand is what they are trying to get to with respect to high ranking officers, as well, you know, are they present at these 83 protest locations --

THE COURT: Yes, see, I don't think that's, I think that's not, I think they were making, I think

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they made clear that's not what's going on with the calendars of the high level people. They're trying to, I think the way they're viewing it is that this is a watershed period in the life of the police department and they want to see what the high level people are doing during this watershed period, whether it relates to the protests or not. Ms. Frick, have I characterized it correctly?

MS. FRICK: Yes, Your Honor, you've characterized it perfectly.

THE COURT: Okay. So, Ms. Robinson, that's why they want, they want everything, I mean we could probably work on the dentist problem although I think that the, you know, the simplest thing is to have, you know, attorneys' eyes only designation. I mean I usually, what's on an office calendar is not really that personal, so that's what they're getting at and you need to -- and I think they're trying to do you a favor by limiting it to the eight week period, I suppose they could have gone longer but that's what they're identifying as the watershed period. And then we can talk about what they want outside that, but I don't even think we've reached a resolution on the eight week period.

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MS. ROBINSON: Your Honor --

THE COURT: So on the eight week period, Ms. Robinson, tell me, I mean or maybe you told me and I need to rule, what's the objection on the calendar for the eight week period?

MS. ROBINSON: Well my objection was originally based on what plaintiffs seem to be disagreeing with is the, the high ranking officers' presence at particular protests, the confirmation of their presence at particular protests --

THE COURT: Right, so that's not what it's about?

MS. NELSON: Your Honor, this is Ms. Nelson, may I be --

MS. FRICK: I'm sorry, Your Honor, the defendants repeatedly violate the Court's one attorney --

THE COURT: Hold on, you didn't even let me speak, Ms. --

MS. FRICK: I apologize, it just happened the entire last, the entire last conference and it --

THE COURT: Hold on --

MS. FRICK: It behooves me to speak up but I apologize for being premature.

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THE COURT: Yes, well also given what happened earlier it's particularly inappropriate. So I was about to say the same thing, which is what I said before to Mx. Green, one attorney per side. Ms. Robinson, if you need to take a break to consult with someone I'd much rather you did that than anything else. So anything else you want to say on just the eight week period calendar issues, Ms. Robinson?

MS. ROBINSON: Nothing else that I want to say on the eight week period.

THE COURT: Okay. Now before I rule on that, Ms. Frick, outside the eight week period what is it you are talking about in terms of calendar entries?

MS. ROBINSON: In terms of calendar entries, as we put in our letter, outside of the eight week period we asked for calendar entries reflecting involvement in any protests outside of that (inaudible), so from Schedule A. So it presumably could be showing attendance at a protest but it also could show meetings about a protest. And that's really what we're looking for even more than just attendance.

THE COURT: Okay, entries relating to protests. Okay, so, Ms. Robinson -- and is there a period for that?

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2 MS. ROBINSON: I would suggest that the  
3 period, if the eight week period --

4 THE COURT: Hold on, I was addressing -- I was  
5 addressing Ms. Frick, what --

6 MS. ROBINSON: Oh, I'm sorry, I thought you  
7 said Ms. Robinson.

8 THE COURT: Maybe I did. Ms. Frick, what,  
9 when you're talking about outside the eight week  
10 period, is there some time limitation on that? you  
11 talked about a subject matter limitation which you said  
12 is entries relating to protests, is there a time  
13 limitation?

14 MS. FRICK: Yeah, well I think it would be  
15 entries reflecting involvement in the protests listed  
16 on the amended or supplemental Schedule A.

17 THE COURT: Okay, so that takes us to some end  
18 date, do you remember what it is by any chance?

19 MS. FRICK: I don't have it offhand but my co  
20 -- my colleagues might be telling me, I believe, I  
21 believe it's early January of 2021, but I might be  
22 wrong.

23 THE COURT: Some period of months. Okay, so,  
24 Ms. Robinson, do you want to address that piece?

25 MS. ROBINSON: I would like to address it as I

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2 addressed it earlier which is that we should stick with  
3 the original Schedule A list of protest locations.  
4 That's what we, that's what the whole litigation has  
5 been based upon this far, and to change it at this late  
6 date, it's only going to add more documents, more time,  
7 more time at depositions and that's why we objected to  
8 an amended Schedule A in the first place.

9 THE COURT: Okay, so your objection is,  
10 relates to the amended Schedule A, if it was Schedule A  
11 you wouldn't have an objection, is that it?

12 MS. ROBINSON: Correct.

13 THE COURT: Okay.

14 MS. FRICK: Your Honor, the amended Schedule A  
15 --

16 THE COURT: Hold on. Hold on.

17 MS. FRICK: I'm sorry.

18 THE COURT: Hold on, what is, how many  
19 protests are added to the amended Schedule A from the  
20 83?

21 MS. ROBINSON: That's what I was just about to  
22 say, it adds five and I believe that that includes the  
23 roll in matters. So it's a total of five.

24 THE COURT: Okay, so I'm going to give you the  
25 ruling on the calendars. You should supply the full



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2 calendars for the eight week period for these  
3 individuals and they should supply entries relating to  
4 protests on the amended Schedule A for, for entries  
5 outside the eight week period. And I'm not making any  
6 definitive rulings about the meaning of the amended  
7 Schedule A or what has to be responded to in other  
8 areas, this is just for this way now.

9 Let's move on to other categories in this, and  
10 I guess --

11 MS. ROBINSON: Yes.

12 THE COURT: I think I was going through this  
13 with Ms. Robinson when I got sidetracked on the  
14 calendars.

15 MS. FRICK: No, Your Honor, we were going  
16 through it.

17 THE COURT: I was talking to you, Ms. Frick?

18 MS. FRICK: Yes.

19 THE COURT: Okay, so what's the next category  
20 other than calendars, just text messages?

21 MS. FRICK: Text messages and then the final  
22 category is just (inaudible) history. So with respect  
23 to text messages, again, we asked for the same, it's  
24 the same timeframe as the calendars which would be text  
25 messages sent by or to the deponent's NYPD phone during

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2 that eight week period, plus dates of other protests  
3 that the deponent attended or was substantially  
4 involved in.

5 THE COURT: Okay --

6 MS. FRICK: And as I understand --

7 THE COURT: Hold on a second. Hold on a  
8 second.

9 MS. FRICK: Yes.

10 THE COURT: Hold on a second. Are you  
11 seeking, so like the calendar, and I think there may be  
12 a different analysis that applies, you know, for me a  
13 calendar is a document and it's circumscribed, very  
14 circumscribed compared to text messages. So it sounds  
15 like you want text messages on every possible topic for  
16 these people for the eight week period, is that what  
17 you're saying?

18 MS. FRICK: We're not seeking, you know,  
19 privileged text messages, we would be --

20 THE COURT: No, no, but you're seeking about a  
21 murder investigation or whatever else is, okay.

22 MS. FRICK: Yes, Your Honor, and part of that  
23 is for the same reason as it's hard to circumscribe the  
24 calendars to a specific date is that discussions about  
25 a protest can happen well after a protest or, you know,

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discussions about planning can happen well before. And so limiting it to a date of a protest, especially, you know, when protests often went, you know, past the hour of midnight and into the second day. And, for example, in these, in the body worn camera and Tero (phonetic) footage, you can see many of these high level officers on their phones, what appear to be texting, meaning like they're not speaking, they're, you know, using their thumbs, so we can surmise it's texting like during a protest. So we believe that the text messages are highly relevant, we've been trying to get text messages for a year now, we haven't received any. I hope that they've been preserved and to the extent that they have, we think that the best way is to again focus it during this very intense eight week period plus the specific dates listed on the Amended Schedule A relating to protests.

THE COURT: Okay, but you didn't really address my concern and maybe I wasn't clear enough about it. I said to you, you want the text messages about the murder investigation, and then you started, you didn't really answer that question, you started talking about how you wanted it about protests, so I can't tell if you're seeking the murder investigation

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2 text messages and all the other text messages, if any,  
3 that had nothing to do with the protests?

4 MS. FRICK: Well, Your Honor, I apologize for  
5 not answering clearly. We are interested primarily in  
6 texts about the protests, but we are also interested,  
7 for the reasons that we explained in the earlier  
8 discussion on calendars, to see what high level NYPD  
9 officers and supervisors were doing, in general, during  
10 this period of time.

11 And so we also just think, to be honest, based  
12 on the amount of work that these discovery disputes  
13 have entailed, that it would just be a simpler  
14 proposition to ask for everything and not invite the  
15 redaction issues that we have run into over and over in  
16 this case.

17 You know, if there is absolutely a completely  
18 irrelevant conversation, are we going to fight to the  
19 mat to have those, no, but I am very concerned about  
20 feeding grounds to defendants to make those  
21 determinations about, quote-unquote, "relevance," when  
22 we've, you know, been down this road and has been, and  
23 have been forced to spend a lot of time litigating  
24 similar redactions.

25 MS. ROBINSON: And, Your Honor, if I could

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interject --

THE COURT: Wait, who is this?

MS. ROBINSON: Amy Robinson.

THE COURT: Okay, you want to interject, go ahead I guess.

MS. ROBINSON: I just wanted to state that, you know, if it's, if there's a murder investigation or there is any other kind of investigation, that, you know, that very well, very likely will be privileged because it's going to be an ongoing investigation. So that would be law enforcement privilege. And --

THE COURT: Wait, wait, hold on. Ms. Robinson, I assumed you would be arguing that you don't want to produce it, it's not relevant, why are you --

MS. ROBINSON: I agree with that, but I also want to assert privilege --

THE COURT: Hold on, there is no point in asserting privilege because you're going to have that right on the production. So let's talk practicalities here.

MS. ROBINSON: Okay.

THE COURT: If it's not relevant we don't have to worry about privilege.

MS. ROBINSON: Understood.

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2 THE COURT: Hold on a second, folks. I, this  
3 is of a different character than the calendar entries,  
4 I, there's no, I do not see a reason to,  
5 notwithstanding past, I can't start making rulings that  
6 the City can never be trusted to review documents for  
7 relevance, so I'm prepared to limit this to texts  
8 relating to the protests in some way, planning, things  
9 happening at the protest, post protest, you know, texts  
10 relating, anything concerning the protests, period.

11 MS. FRICK: Okay, Your Honor -- sorry.

12 THE COURT: Hold on. So, Ms. Robinson, is  
13 there some objection to that?

14 MS. ROBINSON: The caveat, there are two  
15 caveats, the first is that the timing, if it's going to  
16 be the same sort of timing with the calendars. And  
17 second is that the folks that are going to be deposed  
18 are very high ranking individuals and, you know, are  
19 decision makers. And to remove their, and in order to  
20 avoid unnecessary removal of their phones, we would  
21 like to go through a series of questions with them to  
22 see if they do, in fact, use the text function, if they  
23 texted during protests, things along those lines so  
24 that we can find out whether we need to remove their  
25 phones from them.

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THE COURT: Okay, but that's not dependent on I mean as long as they're getting any text messages my ruling isn't going to affect your obligation. You have the same obligation you have with any other document request, you need to do a reasonable investigation --

MS. ROBINSON: Understood, Your Honor.

THE COURT: If it's, if you have a witness who, you know, is, can provide you with sufficient assurance that they never used their phone for texting ever, then you will make your decision about what you are going to do. I'm not going to start ruling in advance about how you're supposed to do that. God help this person if it turns out that they said they never do texting and texts from them turn up, someone will have failed miserably and there will be consequences for it. So I'm not going to tell you how to do that job. What I am going to tell you to do is to produce text messages. If they --

MS. ROBINSON: Right, Your Honor, but --

THE COURT: There's nothing else I can do.

MS. ROBINSON: The only question I have with that is that do you text message ever is a different question than did you text during the protests or do you generally used the texting function. If somebody

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doesn't use the text, didn't use text during the protest --

THE COURT: I mean you're asking me, I'm not sure what you're asking me for. Right now there's a request which I'm about to grant in some form that requires you to produce the text messages of certain individuals relating to protest, and we haven't figure out the period or whatever it is. So what is it you want from me, do you want me to say I give you permission to take their word for it if they say they don't have any, I'm not going to do that. you have to conduct a reasonable investigation and discuss it with them and let them know the consequences for an error in this.

MS. ROBINSON: Understood, Your Honor.

THE COURT: It's not for me to tell you how to do it. You have to do it correct, they have to -- and you have to do it correctly. They have to be produced.

MS. ROBINSON: Understood, Your Honor.

THE COURT: And you have to do it reasonably. So I mean I'm not, you're not looking, I think it's the same ruling as we had before, I'll give each side one last chance to tell me why it shouldn't be, which is it's going to, and I know the objection about the



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amended Schedule A, and I'm going to overrule that temporarily, it's going to be texts relating to these protests, texts concerning these protests, to use the Southern District definition, that are on the revised schedule. And I think that's it, that's what you're looking for, Ms. Frick, now that you know that you're not getting all the texts, right?

MS. FRICK: Yes, Your Honor.

THE COURT: Okay, Ms. Robinson, anything else to say on that?

MS. ROBINSON: No, Your Honor.

THE COURT: Okay, so that's what needs to be produced on texts. Ms. Frick, next category?

MS. FRICK: Thank you, Your Honor. The final, the final thing to discuss is the disciplinary history. So, you know, as is typical with depositions, we'd like to see the disciplinary history for each deponent, particularly the CCRB and the IAB files. Right now what has been produced is just CCRB and IAB files relating to the protests, but for the deponents, themselves, we're interested in their disciplinary history and, you know, to the extent that the City, what I was going to say is that we can offer, you know, we're fine with a compromise of, you know, old, very

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old disciplinary history that doesn't implicate honesty, or excessive force or improper arrests could be redacted. But otherwise we're entitled to know if the person that we're deposing has a significant history of improper conduct.

THE COURT: Ms. Robinson?

MS. ROBINSON: Your Honor, we, we do not object to that. We don't object to giving the exact same thing that we've given for the line officers, which are their, to non-civilians, their disciplinary histories, their IAB history, their CCRB history and their CPI history redacted just the way they were with the, with the line officer depositions.

THE COURT: Okay, I gather from your letter that you thought you had already produced it and you wanted them to find it and you didn't have to find it, I wouldn't have thought you'd already produced it to these people but maybe I'm wrong.

MS. ROBINSON: Well what we, what we've done with the line officers if we've produced it, I think it's the two business days prior to the deposition. So it would be, you know, in the hopes it would be the most recent that we could print out on before a deposition.

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THE COURT: I think you're not following me. You seem to be objecting to this in some way in your letter --

MS. ROBINSON: I was objecting to -- I'm sorry, Your Honor, I'm sorry to interrupt you. What I was objecting to was providing IAB and CCRB files.

THE COURT: Oh, as opposed to history.

MS. ROBINSON: As opposed to the histories.

THE COURT: And what did you do with the line officers, did you get, did you get the plaintiffs files or just histories?

MS. ROBINSON: The plaintiffs got the histories, but we had already produced, we've already produced all the CCRB files and the IAB files. So for us to reproduce them for a deposition would to me seem to be a waste of valuable time.

THE COURT: I can't tell you how lost I am, I'm totally lost now.

MS. ROBINSON: Okay, I understand, let me, I think I understand why you're lost. So there's a --

THE COURT: All right, try and help me.

MS. ROBINSON: There are three reports of various pages long, and IAB report, a CCRB report, and a CPI report which shows an officer's history at a

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2 glance. Now, if there's a case or an investigation  
3 within those reports, then there would be a file that  
4 pertains to that investigation. And we have produced  
5 all of those, and protest related --

6 THE COURT: Hold on. Hold on, stop, stop,  
7 stop, you've produced them all for line officers, is  
8 that right?

9 MS. ROBINSON: For everyone.

10 THE COURT: Including these high level  
11 deponents?

12 MS. ROBINSON: No.

13 THE COURT: Hold on, hold on, I'm going to  
14 hear from one side and then the other. You've produced  
15 it for these high level deponents, you produced their  
16 disciplinary history, first of all, you produced their  
17 disciplinary histories already?

18 MS. ROBINSON: Well not their, possible, yes,  
19 some of them we have produced their disciplinary  
20 histories, they're not --

21 THE COURT: But not all?

22 MS. ROBINSON: Even the police commissioner on  
23 down. You know --

24 THE COURT: Some or all? Ms. Robinson, Ms.  
25 Robinson, you said some --

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MS. ROBINSON: Well, I'm not sure how current they are.

THE COURT: Have you done it for all?

MS. ROBINSON: I don't believe we have done it for all, but the ones that we have done it for would be outdated at this point in our database. So --

THE COURT: But you're willing to do, hold on, you're willing to do the histories for all of them, you're not objecting to that I assume?

MS. ROBINSON: No objection to that.

THE COURT: Okay. So now we need to deal with is in the event there's something for honesty or improper arrest, whatever our categories are, there may be a, quote, "substantive file relating to an investigation." And let me just turn now to Ms. Frick and I'd like her to answer that question, and then if she wants to say whatever she was going to say before, that's fine.

MS. FRICK: Thanks, Your Honor. So we do, we are hoping with these higher level officers to receive the underlying files for the entire disciplinary history that is, you know, relatively, that isn't too old, because these are officers who by definition have been promoted through the ranks. And a lot of our cases

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involve Monell claims based on supervision and promotion. And so even if an improper conduct is not protest related or even false arrest related, that is, can be very relevant to the plaintiffs' claims. And we have already seen this in disciplinary files and histories that we have had to fight over, for example, with an officer named Zelikov, there was a disciplinary file or disciplinary incident that had been entirely redacted which, as I understand it, this was the AG's Office, but brought this dispute forward and eventually they learned from that incident that this involves a, the officer threatening to kill his ex-wife and the response was that this officer's gun was removed for a year. And so that entire file is very relevant to plaintiffs' claims regarding to, regarding promotion and supervision even though it doesn't have to do with excessive force, or dishonesty or a false arrest because this person --

THE COURT: Okay, hold on. Hold on, I could not tell from the letters that this was, this does not seem to be the issue from the letter. I don't mind doing it --

MS. ROBINSON: I also do not, I also do not know that this is the issue, Your Honor.

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THE COURT: Yes, this obviously has not been keyed up -- teed up, rather, I'd certainly rather deal with it now. So it sounds like, Ms. Frick, that for the high level people you're interested in their disciplinary history whether or not it relates to the categories that I've already ruled upon with respect to the line officers, is that correct? It certainly wasn't in your letter, at least I didn't see it, is that what I'm hearing now?

MS. FRICK: I think you -- well I think there's some confusion here about what was ruled earlier with respect to the line officers. So what has been produced in general in the litigation are the CCRB and IAB files relating to the protests, that's bucket one. So when Ms. Robinson referred to having produced a lot of other CCRB files, that is, those are the files that we have received, they are protest related files. In advance of each deposition we have been given that deponent's disciplinary history, those kind of snapshot looks that Ms. Robinson --

THE COURT: Hold on, did you get the full disciplinary history or did you get just the listings relating to the categories I thought I had ruled on like improper arrest, honesty and so forth, I remember

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ruling on this.

MS. ROBINSON: Can I object --

THE COURT: Hold on. Hold on --

MS. FRICK: Ms. Robinson, I don't know the answer --

THE COURT: Ms. Robinson, do you know the answer?

MS. ROBINSON: I do know the answer because I did most of the production --

THE COURT: Okay, what's the answer.

MS. ROBINSON: Yes, I did make a mistake, you know, according to Your Honor, with respect to the Zelikov, it was a failure to report and we no longer redact for failures to report.

THE COURT: Okay, so just can you answer my question, does the, please, if you can, can you answer this question, when you give what you call these reports, these histories, are you giving the full history or are you redacting everything except for the categories of honesty, improper arrest, failure to report and so forth?

MS. ROBINSON: We only redact for anything over ten years, anything that relates to -- no, we redact for anything that is over ten years, anything



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that's not related to excessive force, false arrest or honesty.

THE COURT: Okay, so that was my, that's my very simple question, so the histories do not show things outside what I've ruled on with the categories, that's all I was trying to get at. So --

MS. ROBINSON: But there's another issue which is, I mean to produce the, let's say, let's take, you know, an example of an officer that did something that is not related to false arrests or excessive force, and it's part of his CCRB report, his snapshot. For us to go back now and get the underlying files for something that's --

THE COURT: Hold on, we're not at the underlying files yet, and I don't even know why we're talking about underlying files that don't relate to these categories. I'm even more confused than I thought I could be right now. I thought what we were talking about was what they get for these high level officers and that there's essentially two categories. One is what they get on the histories and two, if there is something on the history that fits within those categories, when do they get the actual underlying documents. I haven't even gotten through number one yet

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MS. ROBINSON: Okay, do you want the answer to that one?

THE COURT: I'd like to try getting through number one.

MS. ROBINSON: Okay, if that was number one I can answer that.

THE COURT: Well I think you already answered it, I'm trying to figure out what the rule, what Ms. Frick is seeking with respect to the high level people, are you seeking anything more on just the redactions of the histories? It sounds like they're not even objecting to giving the histories for these people that fit within these categories, are you seeking something more than a listing that redacts everything but those categories, Ms. Frick?

MS. FRICK: Your Honor, for, we are willing to accept that for the histories we can be limited to the categories that you've discussed.

THE COURT: Okay. So, one, okay, so that takes care of the history. Now, in terms of, that should be, I mean any questions on that, Ms. Robinson? So for the histories you have to produce the histories for each of these people with respect to what I'll call

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the four categories, I don't know if there really are four, honesty, improper arrest, falsely reporting, excessive force, any problem with that?

MS. ROBINSON: Yes, I do have a problem with that because we've, what we've produced so far, and I don't mean with respect to depositions, I mean in the litigation in total, is we've produced the underlying files for this, the protests only.

THE COURT: Okay, stop, just stop. Are you telling me you haven't produced for each officer their histories?

MS. ROBINSON: No, their histories, yes --

THE COURT: That's my only question, Ms. Robinson, do you have an objection to producing the histories for these individual people with redacting everything but the four categories. I can't believe you'd have a problem with it but I'm just asking.

MS. ROBINSON: No, as I said earlier, I don't have a problem with that.

THE COURT: Thank you, that's fine, we've now gotten through that, now we're going to get to underlying documents, I haven't even started on that yet.

MS. ROBINSON: Okay.

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2 THE COURT: So, Ms. Frick, what are you  
3 looking for in terms of underlying documents?

4 MS. FRICK: I mean I'm looking for --

5 THE COURT: When I say underlying documents,  
6 hold on, let me just back up for a second.

7 MS. FRICK: Yep.

8 THE COURT: I may be making a false assumption  
9 here and my assumption is, is that to the extent there  
10 are any investigations, that you are looking for  
11 documents on those investigations and that's all you're  
12 looking for. You're not looking for documents on any  
13 investigations that don't relate to the four  
14 categories, is that right, Ms. Frick?

15 MS. FRICK: That's right, Your Honor, we would  
16 like the underlying documents, meaning the files,  
17 relating to disciplinary history that falls into those  
18 categories that defendants have agreed to produce.

19 THE COURT: Okay. So now I know, you know,  
20 Ms. Robinson, what the plaintiffs are seeking, what's  
21 the objection to that?

22 MS. ROBINSON: Okay, I, I'm probably the only  
23 one now in the room that's confused, but as long as  
24 what, and we're talking underlying files now, correct,  
25 Your Honor?

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THE COURT: Yes.

MS. ROBINSON: Okay, so we have no, we've already produced the underlying protest files for all officers.

THE COURT: Stop, stop, you just used the word protest, no one said anything about protest in all of this.

MS. ROBINSON: If we were to go back and provide other disciplinary history, files for things that were not protests, we're talking terabytes.

THE COURT: Okay, that's fine, now I'm happy to hear your objection. So, first of all, with respect to the line officers, did you produce the underlying files?

MS. ROBINSON: Only for the protests, Your Honor.

THE COURT: Only for protests, okay, and Ms. Frick, you're looking for not, anything, not just protests, is that right?

MS. FRICK: That's right, Your Honor. And I do just want to clarify just for the record that the CCRB and IAB files that have been produced for the protests are not complete. And we have been fighting with them on this and I just really want to --

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THE COURT: I can't deal with that now, Ms. Frick. I can only deal with one thing at a time.

MS. FRICK: Understood.

THE COURT: So what's the, I mean there is some (inaudible) inconsistency and I, you know, at this point we're not talking about relevance, we're talking about I guess impeachment or something, there does seem to be a burden if someone had some disciplinary history unrelated to this protest. What's the justification for that burden?

MS. FRICK: The justification for the burden is that, in general, when you are deposing somebody you are entitled to understand exactly what it is that they have been accused or found to have done in terms of misconduct, particularly as here where so many of the cases involve claims about the NYPD's improper promotion and supervision of these high level officers.

THE COURT: But I mean I don't know if it was your own judgment, but you didn't get it with respect to the line officers, is that right?

MS. FRICK: That's right, Your Honor, but here this is specifically about people who, you know, we would argue, many of who have failed upward, right, who are being promoted despite serious histories of

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misconduct. And so with higher level people those files are arguably more relevant and that's why we're, you know, pushing for them here.

THE COURT: Okay, I understand the argument but I also understand the burden. So I'm not going to give it to you now, you certainly can inquire about it at the deposition. If there's some particular case that you think you can make the case to me that producing a particular file is extremely important, you can make the application, I doubt you'll get the deponent back again, but I'd be willing to hear the application. But for right now you are going to get what you got with the line officers.

All right, anything else on the requests from the plaintiffs to the defendant?

MS. ROBINSON: I just, I have one thing that I would like to add, and I know that we've discussed privilege and you have discussed privilege on this, in this conference, but I also want to make objections for the deliberative process privilege with respect to any sort of after action reports, the aftermath.

THE COURT: I'm not sure what you mean when you say you're objecting to it, to the extent there's a document involved you should supply a privilege log

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2 that says I'm not producing this calendar entry. I mean  
3 it's hard to believe a calendar entry would --

4 MS. ROBINSON: No, no, no, Your Honor, I'm not  
5 talking about calendar entries, I'm --

6 THE COURT: But if you're talking about text  
7 messages then that's, you'll do your privilege log, I  
8 don't know what else to tell you.

9 MS. ROBINSON: Okay. All right, I just wanted  
10 to make, you know, just, I just wanted to make it clear  
11 that there could be a deliberative process privilege to  
12 be asserted. And you're right on the calendars and the  
13 texts.

14 THE COURT: Okay, I mean, you know, the  
15 privilege may not be as broad as you think. I mean  
16 people talking about what just happened at a protest  
17 doesn't mean --

18 MS. ROBINSON: No, no, no, not that, Your  
19 Honor, steps leading up to making changes, that sort of  
20 thing.

21 THE COURT: Well I'm not making any rulings on  
22 deliberative process.

23 MS. ROBINSON: Understood.

24 THE COURT: Any questions about what I ordered  
25 with respect to the plaintiffs' requests of the



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defendant?

MS. FRICK: Yes. Yes, Your Honor. If the defendants are being compelled only to produce the disciplinary history which they have already claimed today are, you know, just a handful of pages that can be pulled up quite easily, we'd ask that those be provided much sooner than, you know, in the days leading up to a deposition, especially so that if there does seem to be something that we do feel is particularly significant based on Your Honor's order, that we would have time to come, you know, just meet with the City and then if necessary come to the Court to petition for those underlying documents. And so I don't see any reason why we should have to wait until the days before a deposition to receive those disciplinary histories.

THE COURT: Yes, Ms. Robinson, unique among these various requests, the disciplinary histories do not require the involvement or your preparation of the deponent, it seems like this is something you're going to run on a computer, and that you can do it pretty easily --

MS. ROBINSON: It is easily, it is not difficult to obtain them, it's exceedingly tedious and

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time consuming to redact them.

THE COURT: Right, but you're going to have to do it anyway. And you don't need the involvement of the deponent, that's what's unique about this. So this should be, you know, unlike the other things which I understand require the involvement of the deponent, this should be done on a much sooner timeline. So --

MS. ROBINSON: Perhaps one week ahead of a deposition?

THE COURT: Yes, well, no, I think it should be done within the time period of when you get them name. Have all the names been done or been out there or not yet, Ms. Frick?

MS. FRICK: Yes. Yes, all the names have been delivered --

THE COURT: It should be tied to the names. So this should be, you're going to have to do it anyway, you should start this project independent of preparation for the deposition, and I'll give you two weeks to do whatever names they've given you so far, okay? So that's July 25<sup>th</sup>, is that two weeks?

MS. ROBINSON: It will take, you know, quite some time to do the redactions, Your Honor.

THE COURT: But you can run them tomorrow. How

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many people are we talking about?

MS. ROBINSON: Well, it's not a matter of us running them, it's a matter of we get them from different places. So the requests have to be made and I think that we could get them relatively quickly but the redaction process is what takes, what takes the time.

THE COURT: How many people are we talking about, Ms. Frick?

MS. FRICK: Meaning, I'm sorry, Your Honor, how many deponents?

THE COURT: How many names have you already, I said do you remember how many names are out there that they need to do this for right now?

MS. FRICK: Well we've already provided from our last conference and weeks before that we've provided our full list of the high level deponents. And I believe it's something around 80-ish names.

THE COURT: Eighty names.

MS. FRICK: It might be more than that, I don't have it in front of me because it wasn't at issue today.

THE COURT: I mean some of this depends upon when these people are going to be deposed. I mean if

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someone is not being deposed for six months, I would give more time. When is, when do we, when does the next high level deposition happen?

MS. FRICK: Well that's another issue, Your Honor, that I was hoping that we could speak about at the end of this conference, but right now there are no, we have asked the defendants to schedule, we have a list of 30 names as like a first batch to prioritize including a handful of names that we'd be ready to depose right away. We sent that to them last week on Wednesday. We have not gotten a response and right now there are no depositions of defendants on the calendar despite our efforts.

THE COURT: Okay, well I will put that off for the moment. Here's what I'll say, you should run these 80 names now and you should do the reactions, I'll give you till August 1<sup>st</sup> to do that. And presumably the plaintiffs will be reasonable about people who aren't being deposed right away if you need some time to do the redactions. But other than that you're going to have to come back to me. August 1<sup>st</sup> for the redactions.

MS. ROBINSON: You know, I understand that, Your Honor, but if a deponent is going in December --

THE COURT: Yes, I assume the plaintiffs will

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not, will be reasonable but if they're not, just write me a letter and say we have this person in December, they're refusing to give us an extra week, and we'll see what comes of that. I'm counting on the parties' good will here.

MS. FRICK: Your Honor, just to clarify because I now have the list in front of me, the high level deponents that we've noticed are approximately 55, so my number was significantly overstating.

THE COURT: Okay, that seems very redactable by August 1<sup>st</sup>.

MS. ROBINSON: The only --

THE COURT: Any --

MS. ROBINSON: The only issue that I have with that, Your Honor, is that when somebody high ranking is deposed in December and they're going to want the whole thing all over again.

THE COURT: No, they get it once. So, I mean, Ms. Frick, you get it once. I mean if you'd rather have a system where you get it closer to the deposition, you can work that out with the defendants, but I assume you understood you'd get it once.

MS. FRICK: Understood, Your Honor. If there's some other alternative, I don't want to speak for

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everybody right now, I'm not (inaudible), I think that, you know, we can, that sounds good to me but, of course, we will communicate with Ms. Robinson if we want to propose some other --

THE COURT: You two can modify -- you two can modify, the two sides can modify this date of August 1<sup>st</sup> by agreement without involving me.

MS. FRICK: Thank you, Your Honor, that's helpful.

MS. ROBINSON: Thank you, Your Honor.

THE COURT: Okay. Anything else on what defendants owe plaintiffs, Ms. Frick?

MS. FRICK: Nothing -- nothing else on our end, Your Honor.

THE COURT: Ms. Robinson?

MS. ROBINSON: Yes. What defendants would like is essentially --

THE COURT: No, no, no, no, no, anything else on what defendants owe to the plaintiffs?

MS. ROBINSON: No, Your Honor.

THE COURT: Okay, now we'll move on to the other issue that is in the letter which is what the plaintiffs, I'm sorry, what the defendants are seeking from the plaintiffs. Let me, let me try to express

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what I was trying to express on docket 528. These are not 30(b)(6) depositions. The nature of the plaintiffs' claims are apparent from the complaints. There's not a big mystery there. If the plaintiffs provide them exhibits that the defendant has never seen, the defendant -- I'm sorry, I say defendant, it's not a defendant. If the plaintiffs during the deposition of a witness pull out an exhibit that the witness has not, you know, been prepped on, has not seen or whatever, that witness is going to have the opportunity to read that document and answer it intelligently after having read the document. If the witness is a lawyer and they're being asked about what the meaning of a case is, that lawyer is going to have the opportunity if they can't answer it on the spot to say I would like to read the case fully in order to give you an intelligent answer and they are going to be allowed to do that.

So and we're deciding, and the time being allotted to the deponents we're hopefully setting in advance, and even if we're not, certainly, whatever time is spent reviewing something like that is not going to be chargeable to the defendant as it were. So there's every incentive to the plaintiffs to inform the

witness in advance of exhibits and cases and things like that. So I'm not sure that it adds anything for me to require the plaintiffs to do it because, you know, then we, you know, if they came up with something that, you know, maybe there's some line of questioning that led to some other document and they want me to bring up the document, I don't want to prevent them from doing it if the deponent, you know, already knows about it and it's not something they necessarily would have known about in advance to alert the other side to.

So it seems like there's some natural incentives here on the plaintiffs to supply documents, and the same thing goes for topic areas. If there's a topic area they want to know that's somehow not obvious that the witness would know, and the witness is saying, you know, I'd have to review my notes on that and I can't answer that question for you right now, there's some things I need to review in order to answer your question, then they're not going to get that witness back necessarily if it's something, you know, that they could have told the witness about in advance. So these natural breaks, that just makes me wonder why the plaintiffs feel, I'm sorry, why the defendants feel that I need to be ordering something along these lines,



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what is it that you envision happening that's going to  
be -- let me finish --

MS. ROBINSON: I'm sorry.

THE COURT: That's going to be detrimental to  
you if I don't issue the order that you're requesting?

MS. ROBINSON: Your Honor, defendants, the  
defendants believe that they should be provided with as  
much of the topics, and exhibits, and video, and case  
law to the extent that it's relevant, as much as  
possible before these depositions take place to, to --  
what am I trying to say, to make as much of the time of  
the depositions that we have and not have any gotcha  
moments. There are 500,000 documents in this litigation  
and thousands of videos, and, you know, to, to catch  
someone out on a video that they haven't been prepped  
on or an exhibit that they haven't seen before, it just  
seems to me to be an inefficient way of conducting the  
depositions. And the defendants are as entitled to, as  
far as I'm concerned, they're entitled to information  
before depositions as plaintiffs are.

THE COURT: I mean, Ms. Robinson, there is  
absolutely no equivalence here. I mean I'm not saying  
you shouldn't get it, but there's a world of difference  
between producing documents that were part of a

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document request and producing them in advance of the deposition in which you've been (inaudible) and should have happened anyway, and asking what you're going to be asked about in a deposition, you don't see the difference between those two, they're completely different? And it's not the norm that people know in advance what exhibits they're going to be asked for in depositions, why is this case being treated differently?

MS. ROBINSON: Well a lot of things in this case are treated differently and, you know, this is a case that is very unusual in that there are many very high ranking officials that are going to be testifying in this case. And I'd just go back to what I as saying earlier is that it is, it prevents the gotcha moment. It prevents wasting time reading a 50 page document. It prevents going down topics which the deponent has no knowledge of and allows that deponent to, when the topics are given, and we're not, you know, we're not saying that, we understand that not every exhibit and topic is known, you know, a week in advance of a deposition but we, we would like to see topics and exhibits, you know, a week before a deposition with the follow-up in three days. I mean it makes, it just makes

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the depositions more efficient and it prevents, you know, gotcha, here you are on video doing this, which could be completely taken out of context or just snippets of video. A snippet of this video and then missing five minutes of it, and then a snippet of, you know, it just, it prevents that.

THE COURT: Ms. Frick?

MS. FRICK: Your Honor, I'm not really sure what to say to be honest. I think that we agree with Your Honor that it is not in our interest to spend our precious deposition hours that we, you know, our few hours that we're allotted between eight cases, having a plaintiff sit and read a 50 page document, that's in our interest. And so the extent that we can avoid wasting time like that, we will absolutely do so in order to have an efficient deposition, that's absolutely in our interest.

You know, the flipside of that, of course, is that to the extent that we do provide information in advance, we ask that the City actually prepare their witness for it and, you know, not take additional time during the deposition to re-review it. But other than that, the idea that a deponent is entitled to know exactly what is coming to them in a deposition, whether

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it's the types of questions that will be asked, the exhibits that will be shown, just have no support in any, in any case, in any rule, in any case law. And I don't have anything else to say other than that there are very good reasons for a lawyer on either side to not want to telegraph their entire deposition strategy well in advance of a deposition.

MS. ROBINSON: And I understand that, Your Honor, but maybe it's escaping me, but I'm pretty sure that plaintiffs agreed to giving topics and exhibits a week in advance to the extent that they know what they are. I think that they agreed to that in their letter.

MS. FRICK: Yeah, exactly, what we agreed to -- what we agreed to is that we would provide exhibits and topics, you know, that we have ready and that we think will aid at the deposition, but that we are not precluded from asking about other topics and other exhibits, that is the whole point of our, you know, our exhaustive meet and confer and our letter.

THE COURT: Okay.

MS. ROBINSON: And we understand that, Your Honor, and all we are asking for is a supplement, you know, we understand that not every document and topic is going to be given to us, but what can be given to us

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within a week and then what can be given to us within three days is all we're asking for.

MS. FRICK: Your Honor, what the City, as long the City is not asking for an exhaustive list then we can, we can provide as we have said from the start, we will provide what we can.

THE COURT: Okay, that's fine.

MS. FRICK: But we won't be precluded --

THE COURT: Provide what you can, provide what you can, you will not be precluded from asking about other topics or documents or videos, just understand that there could be consequences if the deposition has to stop while something gets reviewed that you could have, something that you could have told them about. So I think I'm going with the plaintiffs' offer on this and that's sufficient for me.

MS. ROBINSON: You know, in that case we also would want to object to bringing witnesses back because they, you know, the time is being taken up by reading documents that they haven't seen before --

THE COURT: We'll deal with that if it comes up, I think I already said what I had to say about that.

Okay, I think we've covered the letters. Ms.

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Frick, did I understand from you that you wanted to talk about deposition scheduling?

MS. FRICK: Yes, Your Honor, so --

THE COURT: I normally don't hear topics like this but this is such a critical issue and was the subject of an order that I issued and a discussion that, you know, we had in the conference, that I'm going to make an exception and see what we can do right now on it. Go ahead.

MS. ROBINSON: Your Honor, just before we, before we --

MS. FRICK: Our concern is that --

THE COURT: Hold on. Hold on, Ms. Robinson had something before we start, what?

MS. ROBINSON: Just one thing before we start, does that mean that we will get exhibits and topics a week, you know, what they can a week in advance and what they can't three days in advance, is that what we agreed to?

THE COURT: No, I think you'll get what they can a week in advance and anything else they want to supplement is completely up to them.

MS. ROBINSON: Understood.

THE COURT: Go ahead, Ms. Frick.

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MS. FRICK: Okay, so I think our concern is that we have, we have radio silence right now from defendants about the process that will be used to schedule these depositions. So after we, you know, the conference, I guess it was two weeks ago, and the very firm messaging that, you know, we're going to be on a tight timeline, we need to get everything done, we decided to just make a kind of first batch of deponents that included both lower level and higher level deponents and send that batch over to defendants to say, look, we think it makes sense to kind of start with trying to schedule these so that you're not looking at a giant list and don't really know where to start. So let's start with these 30 people, a handful of which we're ready to depose, you know, right away, and the rest we would ask for, you know, in a couple of weeks and later. We provided that list on Wednesday and obviously that took a lot of coordination among the teams and we haven't heard, we asked for confirmation on Friday that, you know, there was going to be some kind of start to this process, we haven't heard anything. I followed up again today and I haven't heard anything.

And so I'm just concerned A) about the lack of

1 a process, and B) what plaintiffs don't want to do is  
2 waste the Court's time or come to the Court prematurely  
3 about scheduling issues. At the same token obviously we  
4 don't want to wait too long such that by the time we  
5 get to the Court, you know, we have run out of a lot of  
6 time or the Court thinks that we've delayed. And so I  
7 guess it's a two-pronged process question, one is  
8 looking for process from the City and two is asking the  
9 Court for its preference on a process to bring  
10 scheduling matters to its attention.

12 THE COURT: Ms. Robinson.

13 MS. ROBINSON: We have received their proposed  
14 list, Your Honor, but it is our understanding that when  
15 a, as it came, as it comes to the line officers and the  
16 high ranking officers, that defendants choose their  
17 dates based upon their availability. And we have been  
18 taking plaintiff depositions and officer depositions  
19 and we are going to get back to plaintiffs with respect  
20 to their list. But they have a lot of high ranking  
21 depositions on the list and we still need to obtain  
22 availability for those. And we would prefer, I mean  
23 what we would prefer to do is to get the line officers  
24 and the plaintiffs out of the way and then work on the  
25 high ranking and 30(b)(6) witnesses. That's been our



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2 plans from the beginning.

3 THE COURT: I mean --

4 MS. FRICK: Well that plan was never  
5 communicated to us.

6 THE COURT: Yes, I mean I'm not quite sure how  
7 to do this.

8 MS. FRICK: And --

9 THE COURT: Hold on. Hold on.

10 MS. FRICK: If that was the plan we should  
11 have been doing that during the stay.

12 THE COURT: Listen, we have to solve the  
13 problem we have in front of us. The, I guess when  
14 names are available the defendants need to immediately  
15 contact these people and schedule them. Now whether  
16 they are scheduled, you know, August 1<sup>st</sup> or they're  
17 scheduled October 1<sup>st</sup>, I'm not sure is that important as  
18 long as, because some people might not be free for two  
19 months. But I guess it's what's important that there  
20 be a flow of names from the plaintiffs and a constant  
21 filling in of the calendar by defendants as they reach  
22 each of these deponents.

23 MS. FRICK: I believe that our understanding  
24 this entire time is that defendants would be choosing  
25 the dates for the defendant officers, especially --

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2 THE COURT: We just want to make sure that  
3 those dates get chosen --

4 MS. FRICK: Understood.

5 THE COURT: (continuing) -- within some,  
6 within some reasonable period of when they give you  
7 names. So the calendar has to be --

8 MS. FRICK: Your Honor, I need to clarify  
9 that.

10 THE COURT: Go ahead.

11 MS. FRICK: I'm sorry to interrupt, but we  
12 have provided the defendants the full list months,  
13 weeks ago, if not I believe when I started this process  
14 it may have been in May, possibly April, so the  
15 defendants have had the list. The list that we provided  
16 last week was just a subset to say, look, to the extent  
17 that you are feeling overwhelmed by this big list of  
18 names, like here's a list of 30 that we have identified  
19 that like we could, that we want you to prioritize  
20 getting done and that list included a number of line  
21 officers.

22 So the point is that there are, other than  
23 plaintiffs there are no depositions on the calendar,  
24 none, zero.

25 THE COURT: Okay, I see the problem. You have

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the full list, you just, you gave a list of people that you wanted to give priority to. Are you ready on the full list as it were?

MS. FRICK: Are we ready, Your Honor?

THE COURT: Yes, on the full list?

MS. FRICK: Do you mean, I just don't think I understand the question.

THE COURT: No, I mean is there any reason they can't just start going down that full list and putting together a deposition calendar right now?

MS. FRICK: There's no reason. We, our idea was that by providing the names now it would also help, it would also help the defendants know that like we think it makes sense to start with these folks and by start we don't mean, you know, tomorrow, but like this batch of 30 makes sense to be scheduling in the nearer term because there might be, you know, maybe the chief of police shouldn't be the first high level deponent, maybe that person makes sense to be scheduled more in the winter. But at a certain point we kind of lost our, at this point there's not going to be really even time for us to have preferences like that, like we just need people on the calendar.

THE COURT: All right, Ms. Robinson, what's

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your proposal for making sure we have everybody  
scheduled and it's scheduled through February 28<sup>th</sup>,  
what's your proposal for how to do that?

MS. ROBINSON: We, as I stated, we are working  
on plaintiffs' list, that our plan all along was to do  
the line officer, and that's, in fact, what's been  
going on is the line officers and the plaintiffs' deps  
which were ordered to be also taking place. And then  
the higher ranking individuals would go last in the  
schedule. And we are doing our best to make the  
schedule happen and we are going to respond to Ms.  
Frick's schedule. We've been planning to respond to  
that schedule.

THE COURT: When you say schedule --

MS. FRICK: Well, to be clear, it wasn't a  
schedule.

THE COURT: You mean the list of thirty?

MS. ROBINSON: The list, yes.

THE COURT: Yes, okay. So

MS. FRICK: I also think, Your Honor, we have  
to double track depositions, and so our idea, as we had  
discussed in meet and confers and at the conference a  
couple of weeks ago was that we can hold line officers  
and high up officers on the same day. There is simply

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not, there are not enough days, work days between now and February 28<sup>th</sup>, to do it completely staggered to do it the way Ms. Robinson is suggesting.

MS. ROBINSON: I'm not suggesting that, Your Honor. I'm not suggesting, you know, a deposition a week. I'm not even suggesting that we can't double track, it's only been three days since we've gotten the list.

MS. FRICK: No.

MS. ROBINSON: And we are working on that list.

THE COURT: What is your process, when you want to, do you contact a line officer's supervisor and you pick a day and you discuss it with them, what do you do?

MS. ROBINSON: We contact the officer directly and we find out what his availability is, and based upon that we schedule, we basically find out what his vacation days are, what his regular scheduled days off are, and then we work into the schedule when that person is available and then when we are available to prep them and depose them. That's how it works with the line officer, it's the same way that it works --

THE COURT: And how long does, I mean it

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doesn't sound like it would take, I mean maybe it takes a day or two to reach the officer, but once you reach the officer then you've got your list of days, right?

MS. ROBINSON: Yes, we also -- yes, in theory, yes, that should work. It's, it just, it's time consuming, it's a little more involved than that.

THE COURT: I know, but I think this investment of time here will save you some grief down the road.

MS. ROBINSON: And plaintiffs have cancelled depositions, this is, you know, not something that's on the defendants.

THE COURT: Ms. Robinson, Ms. Robinson, I'm talking about scheduling depositions.

MS. ROBINSON: Understood.

THE COURT: We need to have depositions filling up a calendar in the short term.

MS. ROBINSON: Understood.

THE COURT: I'm trying to think about how the process should be, I mean I guess I could say I require the plaintiff, I mean it's a total of about how many names or days, it's like a hundred-something, what was it?

MS. FRICK: With the plaintiffs I believe it's

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approximately 125 days total.

MS. ROBINSON: I think it's 145 days with the plaintiffs, and that's 145 deposition prep days. So we are mindful of the schedule and the --

THE COURT: Okay, I mean it's your own head on the chopping block figuratively, I just can't imagine how you are going to do this without contacting these officers immediately and getting back to plaintiffs within a matter of, you know, two or three, maybe five at the most days saying here's the dates for these people. So that's what should be happening on some ratio.

Now it doesn't seem, if you've got thirty names, is that what you said you gave them, Ms. Frick, to start?

MS. FRICK: Yes, our kind of batch, but, again, it's just a subset of the people that we're --

THE COURT: I understand, on Wednesday, okay. So --

MS. FRICK: And I do think it's not going to work if the defendants try to first get through all of the line officers before scheduling high up officers. Our main concern about that is we're going to come to the winter and we're going to suddenly have no time for

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the people that, you know, the teams really care about.

MS. ROBINSON: And, Your Honor, you know, I misspoke because, you know, obviously, you know, officers will be, you know, combined with each other and there will be high ranking people that will go, you know, more than one in one week. So -- and plaintiffs as well, we still have numerous plaintiffs to go through and we haven't received any of their availabilities as of yet either. So --

THE COURT: If you had come to me and complained about that -- if you came to me and complained about that I would do something. But I'm just trying to solve this problem and it seems to me that we need to get a list really quickly, and I'm not sure it has to be all 145, but at least the 30, you know, within a matter of, you know, by Friday at the absolute latest --

MS. ROBINSON: Your Honor, that would be impossible to get availability for 30 officers --

THE COURT: Why?

MS. ROBINSON: By Friday.

THE COURT: You told, I asked you this question, you told me that you have to contact the officer and then you basically know the dates of that



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2 officer and it takes you a day or two to reach that  
3 officer.

4 MS. ROBINSON: Well I didn't say it takes a  
5 day or two to reach the officer, sometimes it can take  
6 a long time to reach an officer. We've had that issue  
7 with the past round of officers. We did double track on  
8 Friday, by the way, and it can be complicated reaching  
9 officers. Once you reach an officer and, it's just a,  
10 it can be a complicated process reaching them, not  
11 necessarily getting them scheduled. But we have to  
12 take into consideration there are --

13 THE COURT: How many officers have you  
14 contacted so far to try to schedule their deposition?

15 MS. ROBINSON: Me, personally?

16 THE COURT: No, the City of New York.

17 MS. ROBINSON: I don't, I don't know the  
18 answer to that, Your Honor.

19 THE COURT: I want an answer to that question  
20 and I want it by tomorrow. I want, I ordered these  
21 depositions to start happening. You already have the  
22 list of a hundred and whatever names putting aside  
23 these thirty names. These people have to be contacted  
24 immediately. I want, I think the way to do this is for  
25 you to do an Excel spreadsheet with these names and

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column one is officer contacted, and I'd like to see it, if not tomorrow, the next day. And, of course, it needs to be shared with the plaintiffs. And this is a very serious issue, this is a, you know, a gateway into the whole deposition process and it has to be done on an expedited basis, it's the simplest thing in the world. I'm not saying you should be able to reach them in a day or two, but making that initial contact that has to be done just immediately. And you have to figure out these dates, otherwise this is not going to happen and I'm going to, I'm absolutely going to put the blame on the City for this and there will be no escaping it.

MS. ROBINSON: I also want to bring up that plaintiffs have given us no availability for any of the plaintiff dates.

MS. FRICK: That's not, Your Honor, that's simply not true --

THE COURT: Stop. Stop. Stop, Ms. Frick, I'm not dealing with that now, I'll deal with it perhaps at the end of this phone call, but it's outrageous, Ms. Robinson, that your reaction to my asking you to contact these officers which is your responsibility or the City's responsibility, your reaction to that is to

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2 point fingers at the plaintiff about a problem you  
3 never --

4 MS. ROBINSON: No, I agree with Your Honor,  
5 I'm not --

6 THE COURT: Ms. Robinson, you need to stop  
7 interrupting me.

8 MS. ROBINSON: Understood.

9 THE COURT: Because that sends a very bad  
10 message to me when you don't deal with an issue that  
11 I'm raising with you. This is a very, very serious  
12 issue. You have to contact these names, it should not  
13 require the plaintiffs to give you a list of thirty  
14 names. I put a task on you that I know is hard, but  
15 you're not helping yourself. If it were me, the day  
16 after I was told that I had to depose a hundred-  
17 whatever people by February 28<sup>th</sup>. I would organize a  
18 group to contact all of those people to put together a  
19 schedule that would allow me to do it. And that's what  
20 you should be doing. And that's why you need to start  
21 this spreadsheet, I'm frankly shocked if it doesn't  
22 exist already --

23 MS. ROBINSON: It does, Your Honor.

24 THE COURT: And column one is date this person  
25 was contacted, column two is dates they're available,

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2 then you get to putting together a schedule that you  
3 share with the plaintiffs in consultation with the  
4 plaintiff.

5 So we're now going to start, this spreadsheet  
6 is doing to be shared with the plaintiffs, the list of  
7 names and contact date. Whether there's been an effort  
8 to contact them and when the contact was made, okay?  
9 and that needs to be shared with them on a regular  
10 basis starting to days from now. You don't have to send  
11 it to me, I want you to send it to plaintiffs, they'll  
12 tell me if they think there is going to be a problem in  
13 doing this. And it's not just the thirty names they  
14 gave you, that's everybody.

15 Now some, if some names are blank because you  
16 couldn't contact them in the next couple of days,  
17 that's fine, but if it turns out you've only contacted  
18 three people between now and two days from now, that's  
19 going to be very serious and I want to hear about it.

20 MS. ROBINSON: Understood, Your Honor.

21 THE COURT: So let's provide a spreadsheet  
22 every Wednesday, okay, starting this Wednesday, and if  
23 the plaintiffs feel this is not happening the way it  
24 should be happening, they're absolutely welcome to come  
25 to me, I'm not going to be giving any extensions on

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2(a) letters or anything like that, we're going to do it very quickly.

All right, Ms. Frick, do you think there is anything else we can do on the scheduling piece from your end other than the spreadsheet for now?

MS. FRICK: No, Your Honor, I appreciate your help.

THE COURT: Okay, so hopefully that works. Now, Ms. Robison, what do you want, what relief do you want from me on the issue of scheduling plaintiffs' depositions or would you rather talk about it with the plaintiffs first?

MS. ROBINSON: We can discuss it with the plaintiffs first, we just need dates of availability.

THE COURT: All right, I will not deal with the issue then now.

I think that's my agenda for today, anything else Ms. Frick from the plaintiffs' side?

MS. FRICK: That's all on our side, Your Honor, thank you very much for your time.

THE COURT: Ms. Robinson, anything from the defendants' side?

MS. ROBINSON: No, Your Honor, thank you.

THE COURT: I'd like a written order about the

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deposition protocol, if you can't agree on it just send  
me competing orders, try to do it by Friday.

Okay, thank you, everyone, good-bye.

MS. ROBINSON: Thank you, Your Honor.

MS. FRICK: Thank you, Your Honor.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, In Re: New York Policing During Summer 2020 Demonstrations, docket #20cv8924, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Date: July 13, 2022